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Committee on House Administration
“H.R. 1, For the People Act”
Written Testimony of
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Opening Statement

I’m here to tell you the true story about how a Texas billionaire CEO secretly gave \$750,000 to a dark money group in exchange for legislation that would retroactively block 173 severely lead poisoned children from holding his company accountable. The Texas billionaire was Harold Simmons and his company, NL Industries—formerly known as the National Lead Company—made the “Dutch Boy” line of lead paint.

The 173 lead poisoned children are my clients and I filed their lawsuits in the state and federal courts of Wisconsin between 2006 and 2011. The only reason that this story is publicly known is because years after the secret six-figure donation and subsequent sweetheart legislation, a trove of previously secret documents was leaked to *The Guardian* newspaper by a valiant whistleblower.¹

It is indeed a sad day for our democracy when a rich and powerful corporate CEO can deprive innocent victims of lead poisoning their day in court

¹ Ed Pilkington, *Because Scott Walker Asked*, *The Guardian* (Sept. 14, 2016), <https://www.theguardian.com/us-news/ng-interactive/2016/sep/14/john-doe-files-scott-walker-corporate-cash-american-politics> (attached as Exhibit A); see also Mary Bottari, *Scott Walker Backers Defend Lead and Wisconsin’s Poisoned Politics*, Center for Media and Democracy’s PRwatch (Oct. 17, 2016), <https://www.prwatch.org/news/2016/09/13152/scott-walker-lead-pay-to-play>; Pawan Naidu, *Secret cash aided politicians who rewrote Wisconsin law to block claims of lead-poisoned children*, Wisconsin Center for Investigative Journalism (Sept. 2, 2018), <https://www.wisconsinwatch.org/2018/09/secret-cash-aided-politicians-who-rewrote-wisconsin-law-to-block-claims-of-lead-poisoned-children/>.

just because he could afford to secretly donate huge amounts of money to greedy and ruthless politicians. This is even more egregious when one considers that these former lead paint companies knowingly caused the single most catastrophic environmental public health epidemic affecting children in U.S. history.

Wisconsin's lead poisoning level among children is higher than the national average, and disproportionately affects children of color. 10 percent of African American children under age 6 had lead poisoning, compared to 2.9 percent of white children.² In 2005, the Wisconsin Supreme Court ruled that lead poisoned children could sue former lead paint and pigment manufacturers without having to prove which individual manufacturer made the lead pigment that the child actually ingested.³ The former lead paint companies were outraged by this common sense decision. They took the battle over the constitutionality of risk contribution all the way to the United States Supreme Court and lost.⁴

Republicans swept to power in Wisconsin in the 2010 election and the first thing they did was to try to close the courthouse doors that had been opened to lead-poisoned children five years earlier. Governor Scott Walker and the new Republican legislature passed legislation to immunize former lead paint and pigment manufacturers from future lawsuits. NL Industries and other lead paint manufacturers spent six figures lobbying in support of this legislation.⁵

But, since the legislation only affected *future* lead poisoning cases, it did not get rid of the pending lawsuits of the 173 lead-poisoned children. So NL Industries and Sherwin-Williams pushed the legislature to make the law *retroactive*.

In January 2012, the state senate introduced a bill, S.B. 373, to shield NL Industries from accountability to these 173 lead poisoned children.⁶ I

² Avory Brookins, *Report:Lead Poisoning Rate Among Wisconsin Children Nearly Equal to Flint*, Wisconsin Public Radio (Oct. 27, 2016), <https://www.wpr.org/report-lead-poisoning-rate-among-wisconsin-children-nearly-equal-flint>.

³ *Thomas v. Mallett*, 2005 WI 129, 285 Wis.2d 236.

⁴ *Gibson v. American Cyanamid*, 760 F.3d 600 (7th Cir. 2014), *cert. denied*, 1135 S.Ct. 2311 (2015)

⁵ See Wisconsin Ethics Commission lobbying reports for the Sherwin-Williams Company, NL Industries, Inc., and Atlantic Richfield Company for the 2011–2012 Legislative Session for SB-1, *available at* the Wisconsin Ethics Commission “Eye of Lobbying” website (<http://lobbying.wi.gov/Home/Welcome>).

⁶ 2011 Senate Bill 373 (Wis. 2012), <https://docs.legis.wisconsin.gov/2011/related/proposals/sb373>.

attended a hearing on the bill along with about 12 of my clients and their parents. The hearing was very contentious. I demanded that the Judiciary Committee members look into the eyes of the lead-poisoned children at the hearing and explain to them how it is that in America, wealthy corporations can retroactively change the law in pending lawsuits to their benefit while throwing the fate of the innocent injured children aside as if they were nothing more than human garbage.

An optimist would conclude that the innocent, beautiful faces of those little children must have had an effect on those legislators because the bill died in committee in March 2012. A sober observer might have concluded that the sunshine of public attention must have had its sanitizing effect. But what really happened was that this was only a temporary retreat.

A little more than one year later, the lead paint companies struck again, this time without public notice and in both literal and figurative darkness.

In the pre-dawn hours of June 5, 2013, a legislator quietly slipped the retroactive immunity provision drafted by NL Industries into a 532-page budget bill.⁷ The retroactive provision had no authors or sponsors and no notice was given to the public that it was under consideration. Public records showed that NL Industries' lobbyist handed the statutory change to top legislators in a memo with "NL language" handwritten on top.⁸ The suggested change was fast tracked through both houses of the legislature and enacted into law on January 27, 2011.

Years later, documents published by *The Guardian* revealed that at the same time that legislators were pushing legislation to benefit Simmons' company, Simmons and his corporation had secretly funneled \$750,000 into a dark money group coordinating with Governor Walker and state Republicans: the Wisconsin Club for Growth ("WiCFG").⁹

During the 2011 and 2012 recall elections, Walker secretly raised millions for WiCFG, which spent \$20 million supporting Walker and senate

⁷ Patrick Marley, *Bail Bondsmen, Lake Michigan Among Special-Interest Items in Budget Plan*, Milwaukee Journal Sentinel (June 3, 2013), <http://archive.jsonline.com/news/statepolitics/bail-bondsmen-lake-michigan-among-special-interest-items-in-budget-plan-b9927006z1-210231371.html>; see also Wisconsin Biennial Budget, 2013 Act 20, page 466.

⁸ Memo from NL Industries lobbyist Eric J. Peterson to Senate Majority Leader Scott Fitzgerald, *RE: Budget Issues*, at 5 (April 29, 2013) (attached as Exhibit B).

⁹ See Exhibit A; see also checks from Harold Simmons and Contran Corporation to Wisconsin Club for Growth (attached as Exhibit C). Contran Corporation is Simmons' holding company.

Republicans.¹⁰ Despite laws limiting coordination between candidates and outside groups, WiCFG was run by Walker's top campaign advisor.¹¹

Notably, it appears that Walker's team directed Simmons to give to WiCFG, where his donation would remain secret, rather than to Walker's own campaign, where it would be disclosed. A 2012 email to Walker from his campaign advisor flagged Simmons as a potential donor, but warned that he would be controversial because he owned NL Industries, "the leading maker of lead pigment paint".¹² Weeks later, Simmons' corporation gave a six-figure check to WiCFG.

The secrecy was a feature, not a bug.

This is why dark money must be brought into the light. To ensure that our democracy lives up to the promise of self-government, voters must have the information they need to hold our elected officials accountable. Citizens can't exercise their right to self-governance if we don't know who is funding our representatives.

When donors remain secret, the public cannot know whether politicians are taking action to advance those donors' interests. Disclosure not only allows the public to track the undue influence of large contributions on elected officials, it can also deter officials from acting on behalf of donors rather than voters. If Simmons' donations had been publicly disclosed, Wisconsin Republicans may not have been so willing to egregiously act on his behalf. The pay to play or its appearance would have been too obvious.

¹⁰ See Exhibit A.

¹¹ *Id.*

¹² Email from Keith Gilkes, campaign advisor, to Scott Walker, *FWD: Donor Research – I will send separate email with thoughts to discuss on these*, at 1, 12-13 (Nov. 14, 2011, 12:35 PM) (attached as Exhibit D).

ADDENDUM TO OPENING STATEMENT

Timeline:

- A 2005 Wisconsin Supreme Court decision allowed affected families to hold lead paint manufacturers accountable, even if they couldn't identify the specific manufacturer that caused the injury. NL Industries—previously “National Lead Company,” which sold Dutch Boy paint—is one company that had been fighting liability for poisoning Wisconsin children. Its CEO was Harold Simmons. (Simmons died in Dec. 2013.)
- Governor Scott Walker and new Republican majorities took office in 2011, and quickly pushed an array of unpopular measures to attack union rights, to attack voting rights, and to block the public's access to the courts. Those measures prompted historic protests and recall elections in August 2011 against state senators, and in June 2012 against Walker and four senators.
- On April 21, 2011, with the senate recalls approaching, Simmons' corporation wrote a \$500,000 corporate check to Wisconsin Club for Growth.¹³
- On November 14, 2011, as Governor Walker looked to his own recall election, a Walker campaign advisor sent Walker an email with the subject line “donor research.”¹⁴ Walker's advisor wrote that he wanted to discuss three potential donors, including Simmons, “so you are aware of what you might need to defend when these are disclosed.”¹⁵ Walker was warned that “one of the most immediate issues was that NL Industries (purchased by Simmons in 1986) was the leading maker of lead pigment paint,” which had avoided having to pay towards medical treatment for child victims of lead poisoning in Milwaukee.¹⁶
- On December 15, 2011, one month after that “donor research” email, Simmons' corporation gave \$100,000 to Wisconsin Club for Growth.¹⁷
- On January 4, 2012, Simmons himself wrote a check for \$150,000 to Wisconsin Club for Growth.¹⁸

¹³ Exhibit C at 1.

¹⁴ Exhibit D at 1.

¹⁵ *Id.*

¹⁶ *Id.* at 12-13.

¹⁷ Exhibit C at 2.

¹⁸ *Id.*

- In January 2012, the same month as Simmons' third check, senate Republicans introduced a bill to make immunity for lead paint manufacturers retroactive.¹⁹ The bill faced public opposition and failed.²⁰
- In June 2013, after Walker and senate Republicans survived the recall elections, GOP senators slipped an amendment into a 603 page budget bill to immunize NL Industries from existing lawsuits.²¹ Records showed that the language was offered by an NL Industries lobbyist.²²
- In November 2014, Walker won reelection.
- A bipartisan group of prosecutors, supported by Wisconsin's nonpartisan elections board, investigated Walker's campaign for unlawfully coordinating with WiCFG during the 2011-12 elections. The targets of the probe challenged the investigation, and after years of litigation, the Wisconsin Supreme Court ended the investigation in 2015 with a widely-criticized and legally dubious decision.²³ (The court's majority was also elected with millions in spending by WiCFG and other groups under investigation in the probe, prompting a recusal petition and serious concerns about conflicts of interest.²⁴)

¹⁹ Steven Elbow, Crime and Courts: Further Fast-Track 'Tort Reform' Would Work Retroactively, Capital Times (Jan. 23, 2012)

https://madison.com/ct/news/local/crime_and_courts/blog/crime-and-courts-further-fast-tracked-tort-reform-would-work/article_9f2b6a7e-43ad-11e1-8c91-001871e3ce6c.html#ixzz1kLe2co5G.

²⁰ 2011 Senate Bill 373 (Wis. 2012).

²¹ Marley, *supra* note 7.

²² Exhibit B.

²³ See, e.g. Lynn Adelman, How Big Money Ruined Public Life in Wisconsin, 66 Clev. St. L. Rev. 1 (2017), <https://engagedscholarship.csuohio.edu/clevstlrev/vol66/iss1/5>; see also Brent Ferguson, A New Threat to the Viability of Campaign Contribution Limits, 65 Emory L. J. Online 2020 (2016), <http://law.emory.edu/elj/elj-online/volume-65/essays/new-threat-viability-campaign-limits.html>; see also *Indep. Inst. v. Fed. Election Comm'n*, No. 14-CV-1500, 2016 WL 6560396, at *7 (D.D.C. Nov. 3, 2016), *aff'd sub nom. Indep. Inst. v. F.E.C.* (U.S. Feb. 27, 2017) (affirming that the First Amendment does not limit campaign finance regulation to regulating only express advocacy).

²⁴ See Brendan Fischer, *Justices in Walker Criminal Probe Face Conflicts of Interest*, Center for Media and Democracy's PRwatch (Oct. 6, 2014), <https://www.prwatch.org/news/2014/10/12617/justices-walker-criminal-probe-face-conflict-interest>; see also Lincoln Caplan, *Scott Walker's Wisconsin and the End of Campaign Finance Law*, The New Yorker (Jul. 21, 2015), <https://www.newyorker.com/news/news-desk/scott-walkers-wisconsin-and-the-end-of-campaign-finance-law>.

- It wasn't until September 2016 that the public learned that Simmons and his corporation secretly gave \$750,000 to support Walker and Wisconsin Republicans, when *The Guardian* published its report.